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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN BROOKS,

Defendant and Appellant.

D042914

(Super. Ct. No. SCD172680)

APPEAL from a judgment of the Superior Court of San Diego County, William D. Mudd, Judge. Affirmed.

After the trial court denied a motion to suppress evidence (Pen. Code, § 1538.5),¹ Adrian Brooks entered a negotiated guilty plea to possessing cocaine base for sale. (Health & Saf. Code, § 11351.5.) The court denied a motion to withdraw the guilty plea and placed him on five years' probation including a condition he serve 365 days in

¹ All statutory references are to the Penal Code unless otherwise specified.

custody. The court granted a certificate of probable cause. (§ 1237.5.) Brooks contends the trial court erred in denying his motion to suppress evidence and erred in denying his motion to withdraw the guilty plea.

FACTS

After law enforcement officers conducted surveillance, around 5:00 p.m. on February 3, 2003, FBI Special Agent Donald Harris searched an apartment at 3635 West Federal Boulevard. The mother of Brooks's child and the child lived in the apartment. Brooks had a key to the apartment and visited the apartment several times a week. In a container located in a cabinet above the stove in the apartment, Harris found 47.44 grams of cocaine.

Brooks had waived his Fourth Amendment rights as a condition of probation on a prior conviction.

DISCUSSION

I

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Noting that the probation condition provides that Brooks will submit his person, place of residence, vehicle, and personal effects to a search without a warrant or reasonable cause when required by a law enforcement officer, Brooks argues that the officers did not have reasonable cause to believe that the apartment was Brooks's residence or a repository of his personal belongings that might be subject to a search, and the condition permits a search only after an officer requests to conduct the search.

The parties do not contest the trial court's finding that Brooks had standing to challenge the search since the evidence supports the finding that he had a reasonable expectation of privacy in the place searched. (See *Rakas v. Illinois* (1978) 439 U.S. 128, 149; *Minnesota v. Olson* (1990) 495 U.S. 91, 98.) However, through the probation condition, Brooks had waived the right to be free of unreasonable search of his residence and personal effects so long as the search was not arbitrary, capricious or harassing. (See *People v. Bravo* (1987) 43 Cal.3d 600, 606-608.) Here, there was evidence that the officers had received a tip a drug dealer lived at the apartment and had conducted surveillance of Brooks and the apartment. In January 2003, Brooks was arrested driving a car registered to the West Federal Boulevard address and, in February, Brooks's truck had been seen parked at that apartment. The trial court found the search was not arbitrary or harassing. (See *People v. Woods* (1999) 21 Cal.4th 668, 674-682 [probation search based on a tip drugs sold from address searched].) We agree. We interpret Brooks's waiver of search of his personal effects to include consent to the search of any place in which he has an expectation of privacy. Here, that was the apartment at 3635 West

Federal Boulevard and its contents. The trial court did not err in finding the property searched was within the scope of the waiver.

II

Brooks contends the trial court erred in denying his motion to withdraw the guilty plea. Courts may permit withdrawal of a guilty plea upon a showing of good cause. (§ 1018.) Good cause is shown where the plea was entered as a result of mistake, ignorance, inadvertence, or overreaching. (*People v. Urfer* (1979) 94 Cal.App.3d 887, 892.) In *People v. McCrory* (1871) 41 Cal. 458, 462 the Supreme Court stated "when there is reason to believe that the plea has been entered through inadvertence, and without due deliberation . . . the Court should be indulgent in permitting the plea to be withdrawn." However, the Supreme Court also noted, a "party should not be allowed to trifle with the Court by deliberately entering a plea of 'guilty' one day and capriciously withdrawing it the next," and concluded that the decision to allow withdrawal of a guilty plea rests in the sound discretion of the trial court and will not be disturbed on appeal unless an abuse of discretion is clearly demonstrated. (*Ibid.*)

Brooks claims his guilty plea was the product of undue pressure from his counsel and family members, that he lacked adequate time to reflect on the decision, and he entered the plea because he desired to be released from custody so he could retain counsel to represent him. The trial court denied the motion finding competent counsel represented Brooks, the change of plea transcript was clear and unequivocal, and there was no basis for setting aside the plea bargain. The record includes nothing that conflicts

with these findings. The trial court did not abuse its discretion in denying the motion to withdraw the guilty plea.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

McDONALD, J.

McINTYRE, J.